IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 52 OF 1997

M/s Aqua Bakers Pvt. Ltd.,
a Company incorporated
under the Companies Act,
1956 and having its
registered office at
C/2, Dharmanand Kossambi
Building, Swatantra Path,
Vasco-da-Gama, Goa. ... Appellants

versus

1. Syndicate Bank,
   a body corporate
   constituted under the
   Banking Companies
   (Acquisition & Transfer
   of Undertakings) Act V of
   1970 with its Head Office
   at Manipal and Branch
   Office at Vasco-da-Gama,
   Goa.

2. Economic Development Corporation
   of Goa, Daman & Diu Ltd., a
   Company incorporated under the
   Companies Act, 1956 and having
   its Registered Office at EDC
   House, Dr. Atmaram Borkar Road,
   P. B. No.316, Panjim, Goa. ... Respondents

Mr. S. K. Kakodkar, Senior Advocate with Mr. J. J. D'Souza, Advocate for the Appellants.

Mr. S. G. Dessai, Senior Advocate with Mr. S. D. Padiyar, Advocate for Respondent No.1.

Miss P. Bharne, Advocate for Respondent No.2.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : 20TH JULY, 2004.

ORAL JUDGMENT(PER S.A.BOBDE, J.)

This Appeal is by the unsuccessful Plaintiffs against the Judgment and Order dated 30th December, 1996, delivered by the learned Civil Judge, Senior Division, Vasco-da-Gama. The learned Civil Judge, Senior Division, Vasco-da-Gama, has dismissed the Plaintiffs suit for rehabilitation under the R.B.I. guidelines and in the alternative for damages.

2. The Plaintiffs suit is for the following reliefs:-

(i) That the first defendant be directed to prepare a scheme of rehabilitation of the plaintiffs in accordance with the R.B.I. guidelines, annexed at Exhibit 'B' to the Plaint; and further be directed to take all steps to rehabilitate and revive the plaintiffs.

(ii) That in the event of the rehabilitation not being granted or the plaintiffs not being rehabilitated, the first defendant be ordered and decreed to pay the plaintiffs the sum of Rs.42.92 Lacs as damages with interest thereon at the rate of 18% per annum from the date of the suit till realisation.

3. Briefly, the relevant facts are as follows:-

The Plaintiffs started a plant for manufacturing bread and bakery products at Chicalim. They had a current account in the Vasco branch of Respondent No.1/Syndicate Bank. The plant went into production in December, 1986 and operative till October, 1988. It appears to have closed down due to the lightening workers strike which began from 1st November, 1988.

4. The Plaintiffs had set up the plant on the basis of a loan of Rs.42,00,000/- from Respondent No.2/E.D.C. This case, however, arises in respect of the account maintained by the Plaintiffs with Respondent No.1/Syndicate Bank in the current account hereinafter referred to as the Bank. In the current account they enjoyed the facility of Rs.1,00,000/-. In addition, they approached the Bank for a working capital assistance of Rs.1,00,000/- as additional assistance.

5. Apparently, the Bank imposed two conditions on the Plaintiffs which the Plaintiffs accepted:-

1. That the Plaintiffs could regularise their personal loan account of one of its Directors of Group Company Aquarius at the Mormugao Branch; and

2. That the Plaintiffs should create a second charge on the account of the Company by name Aquarius of the Mormugao Branch. Thereafter, the Plaintiffs availed of a working capital of Rs.1,00,000/-. On 22-8-1987 the Plaintiffs applied for increase to Rs.2,00,000/-. This was rejected by the Bank. The Plaintiffs, therefore, turned to Canara Bank which apparently agreed to sanction a working capital of Rs.5.25,000/- on the condition that the Plaintiffs obtain N.O.C. to it.

3. The Canara Bank also appears to have sought a No Due Certificate from the Defendant/Bank.

6. According to the Plaintiffs, when they approached the Defendant/Bank in order to be able to comply with the conditions imposed by the Canara Bank, the Defendant/Bank delayed the matter inordinately, with the result the Plaintiffs eventually closed down their plant due to employees strike. It was after the employees strike on or about 26th December, 1988, that the Defendant/Bank informed that they have no objection to shifting the account to the Canara Bank. The Plaintiffs have, therefore, claimed damages on account of the inordinate delay caused by the Defendant/Bank which had their inaction which disabled them from obtaining working capital assistance from the Canara Bank and thereby to run their plant.

7. The second aspect of the suit arises on account of the Plaintiffs alleged entitlement to the rehabilitation by the Bank as per the R.B.I. guidelines. The Plaintiffs claim that there was a meeting on 7th April, 1989, between them, the Defendant/Bank and the E.D.C. upon which certain unreasonable conditions were imposed on them for rehabilitation. According to the Plaintiffs, they complied with the conditions by the end of April, 1989, and did the following:-

i) plaintiff settled with labour and strike was withdrawn.

ii) applied for Working Capital of Rs.7.5 lakhs.

iii) submitted repayment schedules in respect of arrears of Mormugao Branch.

8. In fact, it appears that at the meeting dated 6/7th July, 1989, certain proposals were made by the Bank to the Plaintiffs. The proposals included the proposal to convert 50% of funds brought in by the Directors into equity. That the Plaintiffs will contribute 25% margin and that the Bank agrees to provide term loan of Rs.3,00,000/- and working capital of Rs.5,50,000/-.

9. However, the real dispute between the parties on the aspect of rehabilitation is that according to the Plaintiffs, the Bank agreed that the Plaintiffs have become a Sick Industry and are, therefore, entitled for rehabilitation. The Bank denies this and, therefore, submits that the Plaintiffs are not entitled for rehabilitation in accordance with the R.B.I. guidelines. The trial Court has on this aspect of the matter clearly committed an error in treating the prayer for rehabilitation as a prayer for substantial performance of an agreement. However, the trial Court has denied the relief of rehabilitation and in our view rightly.

10. It is obvious what is made the basis for rehabilitation from the letter dated 9th August, 1989, written by the E.D.C. to the Bank with a copy to the Plaintiffs enclosing the Minutes of the Meeting held on 6th November, 1989 and 7th November, 1989, that indeed there was certain discussion about how financial assistance will be provided to the Plaintiffs including working capital after making a realistic assessment. There also appears to have been an agreement that the Plaintiffs proposal should be dealing with the outstanding loan of its Group

Company. However, there is a serious dispute by the Bank as regards the following item which is said to have been agreed upon by the parties. That item which is supposed to be item no.4 reads as follows:-

> "The Committee then passed the following resolution:
>
> Resolved that the unit be and is hereby identified as sick and the rehabilitation of the unit be and is hereby approved".

11. Mr. S. G. Dessai, learned Senior Counsel for Respondent No.1/Bank submitted that no such resolution was passed and this resolution was not forwarded by the E.D.C. along with its letter dated 9th August, 1989, which is at Exh.PW1/W colly. Indeed, there seems to be substance in this contention. The resolution under item no.4 reproduced above on the record does not firstly appear to have been admitted in evidence at all. The said resolution is separate i.e. not part of the letter forwarding the Minutes of the Meeting. Secondly, the resolution does not seem to be signed by anybody and the trial Court has marked it as "X" for the purpose of identification.

12. We are of the view that it cannot be said that the Bank agreed and resolved that the Plaintiffs be identified as a Sick Unit and that, therefore, they are entitled to be rehabilitated under the R.B.I. guidelines, which is meant for Sick Companies.

13. In view of the fact the Plaintiffs were not identified as a Sick Unit and it is clear that there was no question of there being any identification for rehabilitation. The question and applicability of the R.B.I. guidelines, therefore, does not arise. In the circumstances, it could not have been successfully contended by the Plaintiffs that they were entitled for directions from the Court for rehabilitation on account of they being identified as a Sick Unit. This being so, no question of any damages on account of non rehabilitation would arise or survive.

14. However, it is necessary to deal with the first point namely the Plaintiffs claim for damages. As stated earlier, the Plaintiffs sought damages in pursuance of a notice dated 11th October, 1989 and the statement of damages is annexed thereto. In the suit, the claim for damages is set out in paragraph 25 as follows:-

Loss due to inadequate working capital	Rs. 29.55 Lacs
Loss due to closure of the unit	Rs. 11.18 "
	Rs. 40.73 Lacs
Forfeiture of security deposit plus interest.	Rs. 2.19 "
	Rs. 42.92 Lacs

15. The evidence in that regard was given by P.W.1, Suresh Naik i.e. the Director of the Plaintiffs, P.W.2, Savio Mascarenhas and P.W.3, B. S. Nagarsekar. P.W.3, B. S. Nagarsekar, was examined to prove the damages since he had prepared the statement of damages at Exh.PW3/A. He, however, stated that the statement is not authentic in the sense that it was prepared only on the basis of information orally supplied to him by P.W.1, Suresh Naik. This witness has also stated that he did not verify the books of account. In fact, interestingly, he was not prepared to sign the unsigned statement before the Court.

16. Nothing in the deposition of P.W.2, Savio Mascarenhas, supports the claim for damages either. The trial Court has rightly observed that P.W.1, Suresh Naik, has not made out a case as to how the Plaintiffs suffered loss of Rs.42.92 lacs. The trial Court has rightly found that mere inadequate finance

cannot be the sole ground for running into loss and that in any case, the Plaintiffs have not proved their loss. In fact, from the evidence on record, it is clear that the Plaintiffs have not demonstrated exactly or even vaguely how they have suffered damages to the extent of Rs.42.92 lacs because the Defendant/Bank did not grant working capital assistance or did not grant them no objection or no due certificate in time. The Plaintiffs case might have been worth considering in case they had demonstrated the extent of profit they were making at the same time in the preceding year and how the absence of working capital assistance from the Defendant/Bank caused them loss at the relevant time. In fact, the Plaintiffs have not even demonstrated any right in law to receive working capital assistance or a no objection certificate within a certain time. It must be borne in mind that matters relating to advance of money by the Banks is a sensitive matter being based on a realistic assessment of the creditworthiness of parties and there is no right in a party to receive a loan or financial assistance from the Bank without being satisfied about creditworthiness.

17. However, having regard to the reasons given

above, we find no merit in the Appeal which is hereby dismissed with costs.

S. A. BOBDE, J.

N. A. BRITTO,J.

RD.